

STATE OF NORTH DAKOTA
BEFORE THE COMMISSIONER OF INSURANCE

In the Matter of

**Fortis Insurance Company,
FEIN 39-0658730, and
John Alden Life Insurance Company,
FEIN 41-0999752,**

Respondents.

CONSENT ORDER

FILE NO. CO-04-150

Insurance Commissioner Jim Poolman, hereinafter "Commissioner", has determined as follows:

1. The Commissioner has authority in this matter pursuant to N.D. Cent. Code § 26.1-01-03.
2. John Alden Life Insurance Company, FEIN 41-0999752, hereinafter "Respondent", is an insurance company incorporated under the laws of the State of Wisconsin and has been duly authorized to do business in North Dakota since 1973.
3. The Commissioner has jurisdiction over the Respondent and the subject matter of this Consent Order, and this Consent Order is made in the public interest.
4. On September 16, 2004, the Commissioner issued an Order, pursuant to N.D. Cent. Code § 26.1-01-03.1, that the Respondent cease and desist its practice of unilaterally asserting setoffs as whole or partial satisfaction of allowed and uncontested claims due to a provider when the setoff is based on an alleged and disputed overpayment to the provider involving a different insured under a separate policy of insurance. The Commissioner determined that this practice did not constitute payment by the insurer of the uncontested claim

as required by N.D. Cent. Code § 26.1-36-37.1 and that this practice was not a fair and equitable settlement practice in contravention of N.D. Cent. Code § 26.1-04-03(9)(d).

5. Respondent has been duly apprised of all allegations contained in the Commissioner's Order.

6. Respondent disagrees with the Commissioner's determinations and maintains that the practice of its setoff practices are in compliance with North Dakota law.

7. Respondent and the Commissioner have agreed to an informal disposition of this matter without further administrative proceedings, as provided by N.D. Cent. Code § 26.1-01-03.1, and enter into the following Consent Order.

NOW, PURSUANT TO THE AGREEMENT OF THE PARTIES, IT IS HEREBY ORDERED THAT:

1. Respondent agrees to immediately stop its practice of unilaterally asserting setoffs as whole or partial satisfaction of allowed and uncontested claims due to a provider when the setoff is based on an alleged and disputed overpayment to the provider involving a different insured under a separate policy of insurance.

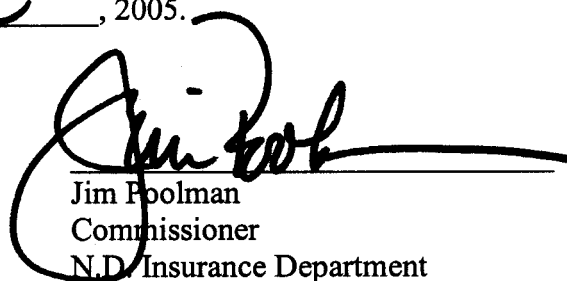
2. In all instances where the Respondent has unilaterally asserted setoffs as whole or partial satisfaction of allowed and uncontested claims due to a provider when the setoff was based on an alleged and disputed overpayment to the provider involving a different insured under a separate policy of insurance, Respondent agrees to pay by check to either the provider or its insured the amount of the setoff that was asserted by the Respondent. Respondent will make the payments required by this paragraph within ninety days of the date of this Consent Order. However, in lieu of any payment required by this paragraph, Respondent may secure from the

provider a written affirmation that the provider accepted the asserted setoff as payment for the undisputed claim.

3. This Consent Order shall not be construed to prevent the Respondent from auditing claims or seeking to obtain refunds of overpayments through legal means which do not violate the provisions of this Consent Order, N.D. Cent. Code §§ 26.1-36-37.1, 26.1-04-03(9)(d), or any other provisions of Chapter 26.1 of the North Dakota Century Code.

4. Upon this Consent Order becoming final, the Cease and Desist Order issued to John Alden Life Insurance Company by the Commissioner on September 16, 2004, shall be deemed to be withdrawn and of no further effect.

DATED this 9th day of March, 2005.


Jim Poolman
Commissioner
N.D. Insurance Department

CONSENT TO ENTRY OF ORDER

The undersigned, _____, on behalf of John Alden Life Insurance Company, hereinafter "the Company," states that the undersigned has read the foregoing Consent Order and is authorized by the Company to consent to the entry of this order. The undersigned, on behalf of the Company, fully understands the contents and effect of the Consent Order. The Company has been advised of its right to be represented by legal counsel, to request a hearing in this matter, to present evidence and arguments to the Commissioner, and of its right to appeal from an adverse determination after hearing. That by the signing of this Consent to Entry of Order the undersigned waives those rights in their entirety and consents to the entry of this

Consent Order by the Commissioner of Insurance and agrees to be bound by it. It is further expressly understood that this Consent Order constitutes the entire settlement agreement between the parties hereto, there being no other promises or agreements, either express or implied.


DATED this ____ day of _____, 2005.

John Alden Life Insurance Company

By: 

Title: 

Subscribed and sworn to before me this 8 day of March, 2005.


Notary Public

My Commission Expires: July 10, 2005